

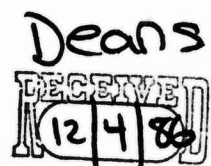
REILLY, LIKE AND SCHNEIDER

ATTORNEYS AT LAW

IRVING LIKE
BERNARD J. REILLY
WILBUR H. SCHNEIDER
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200 WEST MAIN STREET
P. O. BOX 218
BABYLON, NEW YORK 11702

(516) 669-3000



December 2, 1986

Stuart R. Deans, Esq.
Waste and Toxic Substance Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, NY 10278


Re: New York Institute of Technology
Docket No. II TSCA-PCB-86-0241

Dear Mr. Deans:

I enclose herein copies of the PCB content results of the transformer oils of the facilities owned by the New York Institute of Technology, which were recently tested by its consultants, Transformer Consultants.

Our client is willing to meet with the EPA's representatives at an appropriate location on campus. Please let me know when you want to meet and how many persons will attend so that a suitable facility will be made available for the meeting.

Sincerely,


Irving Like

IL:gh
Encs.

SEP 18 1987

CERTIFIED MAIL--
RETURN RECEIPT REQUESTED

Irving Like, Esq.
Reilly, Like & Schneider
200 West Main Street
P.O. Box 218
Babylon, New York 11702

Re: In the Matter of New York Institute of Technology
Docket No. II TSCA-PCB-86-0241

Dear Mr. Like:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator for Region II of the United States Environmental Protection Agency.

Please note that payment is due within thirty (30) days of the date on which the Regional Administrator signed the enclosed Consent Agreement and Final Order. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement.

Sincerely yours,

Colleen H. Connor
Assistant Regional Counsel
Waste and Toxic Substances Branch
Office of Regional Counsel

Enclosures

cc: David Mafrici, NYSDEP
Richard Williams, Esq., NYSDEC

bcc: Mary McDonnell, EN-342
→Daniel Kraft, 2ES-PTS
Donald Duane, 2ES-PTS
Ronald Gherardi, 2PM-FIN
Hon. Thomas B. Yost
Nereida Sotomayor, 2RHC

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Hon. Thomas B. Yost
Nereida Sotomayor, 2RHC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X	:	
In the Matter of	:	
	:	
New York Institute of Technology:	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
Respondent.	:	<u>FINAL ORDER</u>
	:	
Proceeding Under Section 16 of	:	Docket No.
the Toxic Substances Control	:	II TSCA-PCB-86-0241
Act.	:	
-----X	:	

PRELIMINARY STATEMENT

This civil administrative proceeding for the assessment of a penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a). The Complainant in this proceeding, the Director of the Environmental Services Division, Region II, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, New York Institute of Technology (Respondent), on September 16, 1986.

The Complaint charged Respondent with a violation of Section 6(e) of TSCA, 15 U.S.C. §2605(e), and the regulations promulgated pursuant to that Section, 40 CFR Part 761, relating to polychlorinated biphenyls ("PCBs"), and Section 15 of TSCA, 15 U.S.C. §2614.

FINDINGS OF FACT

1. On or about July 29, 1986 a duly designated representative of EPA conducted an inspection pursuant to Section 11 of TSCA, 15 U.S.C. 2610. This inspection was conducted for the purpose of enforcing the Federal PCB regulations set forth at 40 CFR Part 761.

2. On or about July 29, 1986, Respondent had two PCB transformers located in a vault in the basement of Schure Hall at the Old Westbury, New York campus. The two transformers were General Electric Pyranol transformers with the serial numbers P-963494 and P-963493. One transformer (P-963494) contained 165 gallons of fluid, and the other transformer (P-963493) contained 150 gallons of fluid. Both of these transformers were marked with the PCB label (M_L) and there was no evidence of any leakage. The vault's floor was constructed of seamless concrete with six inch curbing. Pyranol is a PCB Fluid.

3. The door to the vault containing the two PCB transformers did not bear the PCB mark (M_L). The two PCB transformers were not included in any of the annual documents presented by Respondent during or subsequent to the above-described inspection. No transformer inspection records for the years proceeding 1985 were made available during or subsequent to the above-described EPA inspection.

4. On January 20, 1987, EPA met with Respondent's representatives to discuss the violations alleged in the Complaint in this matter. During this meeting, Mr. William Donaldson advised EPA that

Respondent would undertake a program to reduce the PCB concentration of the two transformers described in paragraph 2 to below 500 ppm. Mr. Donaldson represented the cost of such work to be estimated at \$40,000. Mr. William Udry explained that Respondent had hired an environmental consultant at a cost of \$400 per day to review and improve compliance efforts at the facility.

5. Mr. William Udry asserted, during the January 20 meeting, that New York Institute of Technology (NYIT) is a non-profit institute of higher education with an open access admissions policy. Mr. Udry represented that NYIT is dedicated to providing occupationally oriented education at the lowest possible cost for lower income students in the New York metropolitan region. Coupled with a declining population of college-age students in the region, Mr. Udry explained that NYIT was experiencing certain financial difficulties and borrowing money to help meet operating expenses. A copy of an audit statement for the year ending May 31, 1986 prepared by the firm of Deloitte, Haskins & Sells was submitted to EPA to corroborate Mr. Udry's presentation.

6. Respondent further represented that the door to the vault containing the two PCB transformers described in paragraph 2 above, had been marked with the proper PCB Mark M_L subsequent to the EPA inspection.

CONCLUSIONS OF LAW

7. Respondent is a "person" within the meaning of 40 CFR 761.3. Respondent operates a Facility at Wheatley Road, Old Westbury, New York where PCB transformers (as that term is defined a 40 CFR §761.3) are stored and maintained, which facility is subject to the regulations pertaining to PCBs set forth at 40 CFR Part 761.

8. On or about July 29, 1986, Respondent did not possess annual documents as that term is described at 40 CFR §761.180(a), incorporating the two PCB transformers described in paragraph 2 above for the period July 2, 1978 through 1985. Preparation and maintenance of such annual documents are required pursuant to 40 CFR §761.180(a).

9. On or about July 29, 1986, Respondent failed to keep records documenting periodic inspections of the two PCB transformers described in paragraph 2 above, as required by 40 CFR 761.30(a)(i)(xii).

10. On or about July 29, 1986, Respondent had not marked the entrance to the vault housing the two PCB transformers described in paragraph 2 above, as required by 40 CFR 761.40(j).

Based upon the foregoing, EPA hereby determines that Respondent has violated Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. §2615(a), and the regulations regarding the use, marking, recordkeeping requirements, storage and disposal of PCBs as set forth at 40 CFR Part 761 and promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. §2615(a), and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties 40 CFR §22.18, it is hereby agreed that Respondent shall hereafter comply with all applicable provisions of 40 CFR Part 761 and, in particular, with the terms and conditions set forth as follows:

1. For the purpose of expeditiously resolving this matter, the parties have agreed to the entry of this Consent Agreement and Final Order (CA/FO). Respondent admits the jurisdictional allegations of the Complaint and the findings of fact as set forth in this CA/FO. Respondent neither admits nor denies the Conclusions of Law as set forth herein.

2. Respondent shall, within thirty (30) days after the effective date of this CA/FO, prepare and maintain annual documents which shall properly account for the PCB transformers described in this CA/FO for the period July 1978 through December 31, 1978, and the years 1979 through 1986. These annual documents shall comply with the requirements of 40 CFR 761.180 and shall be maintained at the facility and available for inspection.

3. Respondent shall undertake and complete within nine months after the effective date of this CA/FO a detoxification procedure for the two PCB transformers located in the basement vault of Schure Hall at the Old Westbury, New York campus.

Respondent shall promptly submit all documentation including but not limited to contracts, memoranda, invoices, bills of lading, manifest forms, PCB test results, letters and other materials related to this procedure to EPA for review. At the completion of this detoxification process Respondent shall submit a written certification to EPA, signed by the appropriate official, certifying that the detoxification procedure has been completed.

4. Respondent shall, within thirty (30) days after the effective date of this CA/FO, properly notify the local fire response agency concerning the two PCB transformers in accordance with the requirements of 40 CFR §761.30(a)(i)(vi). A copy of such notification shall be provided to EPA for review.

5. Respondent shall hereafter comply with the authorization requirements of 40 CFR §761.30(a) for PCB transformers, including, in particular, the preparation and maintenance of inspection records, until such time as the detoxification process referred to in this document renders such provisions inapplicable to such equipment. Respondent shall resume such compliance at any subsequent time should the PCB concentration of such transformers return to a level requiring such compliance.

6. Any information, certifications or other documentation required to be submitted to EPA by this CA/FO shall clearly reference this document and shall be submitted to the following address:

Chief
Toxic Substances Section
U.S. Environmental Protection Agency
Woodbridge Avenue
Edison, New Jersey 08837

7. Respondent shall pay, by cashier's or certified check, a civil penalty for the violations cited herein in the amount of two thousand two hundred dollars (\$2,200.00), payable to the Treasurer of the United States of America, and mailed to: EPA - Region II (Regional Hearing Clerk) P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. The payment shall be identified as In the Matter of New York Institute of Technology, Docket No. II TSCA-PCB-86-0241. Payment is due within thirty (30) days after the Regional Administrator signs this Consent Agreement and Final Order ("the effective date").

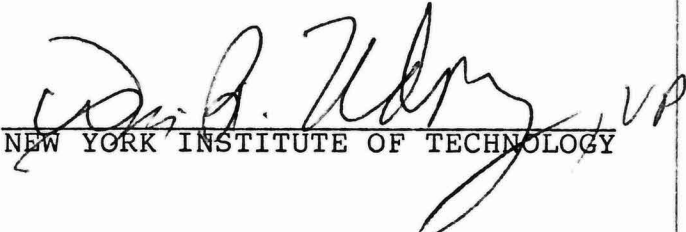
a. Failure to pay the penalty in full, according to the above provisions, will result in referral of this matter to the United States Attorney for collection.

b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to 31 U.S.C. §3717, on the overdue amount, from the effective date of this Consent Agreement and Final Order through the date of payment. In addition, a late payment handling charge of \$20.00 will be assessed if payment is not received by the due date, with an additional charge of \$10.00 for each subsequent 30 day period. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

8. This Consent Agreement is being entered into by the parties in full settlement of all liabilities which might have attached as a result of the allegations in the Complaint. Respondent admits the facts as stated in the Findings of Fact in this Agreement and the jurisdictional allegations of the Complaint. Respondent neither admits nor denies the Conclusions of Law as stated in this Agreement. Respondent also waives its right to request a hearing on this matter, and agrees to pay the penalty called for in Paragraph 7.

RESPONDENT:

BY:


NEW YORK INSTITUTE OF TECHNOLOGY

NAME:

William R. Udry

(PLEASE PRINT)

TITLE:


Senior Vice President and Treasurer

DATE:

September 3, 1987

COMPLAINANT:

BY:

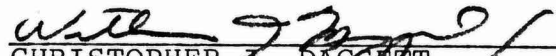

BARBARA METZGER
Director
Environmental Services Division
U.S. Environmental Protection
Agency
Region II

DATE:

Sept 14, 1987

FINAL ORDER

The Regional Administrator of EPA, Region II, concurs in the foregoing Consent Agreement and incorporates that Consent Agreement herein by reference. The Consent Agreement is hereby approved and the Final Order is hereby issued, effective immediately. So Ordered.


CHRISTOPHER J. DAGGETT
Regional Administrator
U.S. Environmental Protection
Agency
Region II
26 Federal Plaza
New York, New York 10278

DATE: _____

9-17-87

Kraft
bcc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

_____	X	
In the Matter of	:	
	:	
	:	<u>COMPLAINT AND NOTICE OF</u>
New York Institute of Technology,	:	<u>OPPORTUNITY FOR HEARING</u>
	:	
Respondent.	:	Docket No. II TSCA-PCB-86-0241
	:	
Proceeding Under Section 16 of the	:	
	:	
Toxic Substances Control Act	:	
_____	X	

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. The Complainant is the Director, Environmental Services Division, Region II, United States Environmental Protection Agency (EPA). The Respondent is New York Institute of Technology.

This Complaint serves to provide notice of Complainant's preliminary determination that Respondent has violated Section 6(e) of TSCA and Section 15 of TSCA, as hereinafter recited:

1. Respondent, a "person" within the meaning of 40 CFR §761.3, operates a facility at 268 Wheatley Road, Old Westbury, New York 11568, where "PCB Transformers" (as that term is defined in 40 CFR §761.3) were maintained and is subject to the regulation promulgated at 40 CFR Part 761 relating to Polychlorinated Biphenyls ("PCBs").

COUNT 1

2. On or about July 29, 1986, Respondent had failed to compile and maintain annual documents for the Respondent-owned and operated PCB Transformers, PCB Items and PCB's for the period July 1, 1978 through December 31, 1978, and the years 1979 through 1985, as required by 40 CFR §761.180(a).

3. Respondent's failure to compile and maintain annual documents for the period July 1, 1978 through December 31, 1978, and the years 1979 through 1985 as alleged in paragraph 2, above, constitutes a failure or refusal to comply with 40 CFR §761.180(a), which is a violation of Section 15(1)(C) of TSCA.

COUNT 2

4. On or about July 29, 1986, Respondent failed to keep records documenting periodic inspections of the PCB transformers, as required by 40 CFR §761.30(a)(1)(xii).

5. Respondent's failure to keep records of inspections, as alleged in paragraph 4, above, constitutes a failure or refusal to comply with 40 CFR §761.30(a)(1)(xii), which is a violation of Section 15(1)(C) of TSCA.

COUNT 3

6. On or about July 29, 1986, Respondent had not marked with the PCB Mark (M_T) the entrance to the vault housing two PCB transformers as required by 40 CFR §761.40(j).

7. Respondent's failure to mark with the mark M_T the vault housing the two PCB transformers as alleged in paragraph 6, above, constitutes a failure or refusal to comply with 40 CFR §761.40(j), which is a violation of 15(1)(C) of TSCA.

PROPOSED CIVIL PENALTY

Section 16 of TSCA authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of TSCA and the regulations promulgated thereunder. Civil penalties for violations of Section 15(1)(C) of TSCA are calculated in conformance with the Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act, which were published on September 10, 1980, in the Federal Register (45 FR 59770). Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, Respondent's history of prior violations and degree of culpability, the following penalty is hereby proposed to be assessed for the violations alleged in this Complaint.

COUNT 1:

Circumstance Level -	4
Extent Category -	Significant
Proposed Assessment for this Count:	\$ 6,000

COUNT 2:

Circumstance Level - 2
Extent Category - Significant
Proposed Assessment for this Count: \$ 13,000

COUNT 3:

Circumstance Level - 5
Extent Category - Significant
Proposed Assessment for this Count: \$ 3,000

Total Proposed Penalty - \$ 22,000

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, and in accordance with Section 554 of Title 5, United States Code, you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty. To avoid being found in default and having the above-cited penalty assessed without further proceedings, you must file a written answer to this Complaint, including a request for a formal hearing, with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, within twenty (20) days of your receipt of this Complaint. Your answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have any knowledge. Your answer should contain (1) a definite statement of the facts which constitute the grounds of defense and (2) a concise statement of the facts which you intend to place in issue at the hearing.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. Your failure to file a written answer within twenty (20) days of receipt of this Complaint will constitute an admission of all facts alleged in the Complaint and a waiver of your right to a formal hearing to contest any facts alleged in the Complaint. In such event, a Final Order on Default will be issued by the Regional Administrator and the civil penalty proposed herein will be imposed without further proceedings. Such Final Order on Default is not subject to review in any court.

Hearings held on the appropriateness of civil penalties under TSCA will be conducted in accordance with the provision of the Administrative Procedure Act (5 U.S.C. §552 et seq.) and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 CFR §22.01 et seq., (43 FR 34730), a copy of which accompanies this Complaint.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, the EPA encourages settlement of this proceeding consistent with the provisions of TSCA. At an informal conference you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including (1) actions you have taken to correct the violation, (2) the effect the proposed penalty would have on your ability to continue in business or (3) any other special circumstances you care to raise. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such conference, or to recommend that the Regional Administrator dismiss any or all of the charges, if the circumstances so warrant. Any requests for an informal conference or any other questions that you may have regarding this Complaint should be directed to Stuart R. Deans, Attorney, Waste and Toxic Substances Branch, Office of Regional Counsel, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-5547.

Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to or simultaneously with the adjudicatory hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order to be issued by the Regional Administrator of EPA, Region II, and signed by you or your representative. Your signing of such Consent Agreement shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a hearing within the twenty-day period cited above, the assessed penalty will be imposed without further proceedings.

PAYMENT OF PENALTY


Instead of filing an answer requesting a hearing or requesting an informal settlement conference, you may choose to pay the proposed penalty.

Such payment should be made by sending to EPA - Region II, (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania 15251, a cashier's or cer-

tified check in the amount of the penalty assessed in this Complaint. Your check must be made payable to the United States of America.

Dated: New York, New York

September 13, 1986


BARBARA METZGER
Director
Environmental Services Division
U. S. Environmental Protection Agency
Region II
Woodbridge Avenue
Edison, New Jersey 08837

TO: Dr. Matthew Schure
President
New York Institute of Technology
268 Wheatley Road
Old Westbury, New York 11568

cc: Compliance Counsel for Environmental Quality
Division of Environmental Enforcement
New York Department of Environmental Conservation

bcc: Mary McDonnell, EN-342
Stuart Deans, 2 ORC-WIS
Daniel Kraft, 2-ES-PTS
Richard Cahill, 2-OEP

CERTIFICATE OF SERVICE

This is to certify that on the 16 day of September , 1986, I served a true and correct copy of the foregoing Complaint and copy of the Consolidated Rules of Practice by certified mail to Dr. Matthew Schure President, New York Institute of Technology, 268 Wheatley Road, Old Westbury, New York 11568. I handcarried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Mrs. Michelle Robinson